

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

JOSH DONLEY,

Plaintiff,

vs.

KATHY DANIEL and AL
THOMSON,

Defendants.

NO. CV-10-5117-RMP

ORDER DISMISSING FIRST AMENDED
COMPLAINT WITH PREJUDICE

1915(g)

By Order filed March 3, 2011, the court directed Mr. Donley to show cause why his First Amended Complaint should not be dismissed for failure to state a claim upon which relief may be granted as set forth in the Second Order to Amend or Voluntarily Dismiss. Plaintiff did not comply and he has filed nothing further in this action. Plaintiff, a prisoner currently housed at the Washington State Corrections Center, is proceeding *pro se* and *in forma pauperis*; Defendants have not been served.

The First Amended Complaint (ECF No. 9) contained no request for relief as required by Rule 8(a)(3), Federal Rules of Civil Procedure. Furthermore, Plaintiff's allegations regarding the processing of his grievances failed to state a claim upon which relief may be granted. *See Ramirez v. Galaza*, 334 F.3d 850, 860 (9th Cir. 2003); *see also Flick v. Alba*, 932 F.2d 728, 729 (8th Cir. 1991); *Baltoski v. Pretorius*, 291 F.Supp.2d 807, 811 (N.D.Ind.2003) (“[t]he right to petition the government for redress of grievances, however, does not guarantee a favorable response, or indeed any response, from state officials”).

ORDER DISMISSING FIRST AMENDED COMPLAINT WITH PREJUDICE -- 1

1 Plaintiff also failed to state facts to support a First Amendment claim against
2 Captain Thompson. He did not state the extent of the Buddhist population or present
3 facts showing he was denied "reasonable opportunities" to exercise his religion with
4 "Hatha Yoga" at the Benton County Jail. As previously advised, a "place of worship
5 need not be provided for every faith regardless of size; nor must a chaplain, priest, or
6 minister be provided without regard to the extent of the demand." *Cruz v. Beto*, 405 U.S.
7 319, 322 n. 2 (1972); *Ward v. Walsh*, 1 F.3d 873, 880 (9th Cir. 1993). There is no
8 constitutional obligation on the part of a jail official to provide Chapel space for a single
9 religious adherent. *Cruz v. Beto*, 405 U.S. at 322 n.2.

10 Finally, Plaintiff failed to provide the dates when he was allegedly denied a
11 nutritionally adequate meal, or state facts linking Defendant Daniels to any alleged
12 denial which compromised his health. *See McElyea v. Babbitt*, 833 F.2d 196, 198 (9th
13 Cir. 1987) (*per curiam*) ("Inmates ... have the right to be provided with food sufficient to
14 sustain them in good health that satisfies the dietary laws of their religion.")
15 Consequently, Plaintiff's allegations were insufficient to state a First Amendment claim
16 against Defendant Daniels.

17 Although granted numerous opportunities to do so, Plaintiff has failed to amend
18 his complaint to state a claim upon which relief may be granted. Accordingly, **IT IS**
19 **ORDERED** the First Amended Complaint is **DISMISSED with prejudice** under **28**
20 **U.S.C. §§ 1915(e)(2) and 1915A(b)(1).**

21 Pursuant to 28 U.S.C. § 1915(g), enacted April 26, 1996, a prisoner who brings
22 three or more civil actions or appeals which are dismissed as frivolous or for failure to
23 state a claim will be precluded from bringing any other civil action or appeal *in forma*
24 *pauperis* "unless the prisoner is under imminent danger of serious physical injury." 28
25 U.S.C. § 1915(g). **Plaintiff is advised to read the new statutory provisions under 28**
26 **U.S.C. § 1915. This dismissal of Plaintiff's complaint may count as one of the three**

1 dismissals allowed by 28 U.S.C. § 1915(g) and may adversely affect his ability to file
2 future claims.

3 **IT IS SO ORDERED.** The District Court Executive is directed to enter this
4 Order, enter judgment, forward copies to Plaintiff at his last known address, and close
5 the file. The District Court Executive is further directed to forward a copy of this Order
6 to the Office of the Attorney General of Washington, Criminal Justice Division. The
7 court certifies any appeal of this dismissal would not be taken in good faith.

8 **DATED** this 4th day of April 2011.

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11
12 s/ Rosanna Malouf Peterson

13 ROSANNA MALOUF PETERSON
14 CHIEF UNITED STATES DISTRICT JUDGE
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